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No. 81-2408

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, and LOCAL UNION 2602, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioners,

v.

DONALD C. FLOWERS and KING E. JONES,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 1, 1982
CERTIORARI GRANTED NOVEMBER 29, 1982

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RELEVANT DOCKET ENTRIES IN THE DISTRICT COURT

DATE	NR.	PROCEEDINGS
1979		
Jan 19	1	Filed complaint
19		Issued summons & 3 copies
19		Js 5 made
Mar 1	2	Filed summons & Mar. ret. served on U. Steel Workers of America International on 1/29/79; Local 2602 of the United Steel Workers of America on 2/22/79; Bethlehem Steel Corp on 2/22/79
23	3	Filed deft USWA and Local 2602 notice of motion and motion to dismiss the complaint with supporting memorandum ret. April 23, 1979.
Apr 13	5	Filed deft Bethlehem Steel Corp notice of motion and motion to dismiss complaint. ret. Apr 23, 1979.
May 21		Ct. heard argument on defts. motions to dismiss, decision reserved, (not recorded)
Dec 3	6	Filed Memorandum & Order to grant deft's motion to dismiss.—Elfvin, D.J. Notices mailed. F-219
5	7	Filed Judgment on decision by the Court.—Clerk. Mailed notices JS 6 made F-219.
1980		
Jan. 3	8	Filed Pltfs'. Notice of Appeal (copy mailed to Messrs. Giroux and Schroeder and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Kedzielawa)

RELEVANT DOCKET ENTRIES IN THE COURT OF APPEALS

DATE	FILINGS—PROCEEDINGS
1/7/80	Copies of docket entries and notice of appeal on behalf of appellants Flowers and Jones filed
3/21/80	Case submitted before: Lumbard, Mulligan, Oakes, C.JJ.
7/15/80	Notice of filing of petition for writ of certiorari filed (S.C. #80-26)
5/7/81	Notice from Supreme Court granting petition for writ of certiorari and remanding case to the Court of Appeals filed
6/8/81	Certified copy of Supreme Court order granting petition for writ of certiorari filed. (SC #80-26)
6/8/81	Certified copy of Supreme Court order vacating judgment of this Court and remanding cause for further consideration in light of *UPS* v. *Mitchell* 451 U.S. —— (1981); further ordered that United Steelworkers recover from Flowers $200.00 for their costs herein expended filed.
6/9/81	Ordered that the judgment of this court of March 24, 1980 be and it hereby is vacated and that petitioners, United Steel Workers of America et al., recover from Donald C. Flowers, et al., Two Hundred Dollars (200.00) for their costs expended in the Supreme Court of the United States, filed
7/20/81	Ordered that the parties shall brief the question whether the language of UPS, Inc. v. Mitchell, applies to the duty of fair representation claim made in the Flowers case or as the Hon. John Paul Stevens assers is or should be limited to the breach of contract claim. Briefs shall not exceed 5 typewritten pages and may be in letter form. Appellants Brief: 8/21/81, Appellees Brief: 9/10/81 Further ordered that this action shall be taken on submission by this panel. (JEL, JLO)

DATE	FILINGS—PROCEEDINGS
2-1-82	Judgment affirmed in part and reversed in part, published opinion, Oak
2-1-82	Judgment filed.
2-24-82	Mandate (Judgment, Opinion) issued.
7-12-82	Notice of filing petition for writ of certiorari filed.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civil No. 79-40

DONALD C. FLOWERS
78 Wiesner Road
Lackawanna, New York

and

KING E. JONES
96 Alexander Place
Buffalo, New York,

Plaintiffs,

v.

LOCAL 2602 OF THE UNITED STEEL WORKERS OF AMERICA,

and

UNITED STEEL WORKERS OF AMERICA, INTERNATIONAL,

and

BETHLEHEM STEEL CORPORATION,

Defendants.

COMPLAINT

The Plaintiffs, by their attorneys, LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES, complaining of the Defendants herein allege:

JURISDICTION

1. This is an action brought by two employees (craftsmen welders), who seek to remedy a wrongful denial by the Employer-Defendant of employment, wages and attendant benefits for the performance of available craft

work, preserved for them by a collective bargaining agreement in force at the time of the violations herein alleged. At the direction of the Employer-Defendant, such work was performed by non-craftsmen welders, in violation of several provisions of the collective bargaining agreement, which these Plaintiffs herein seek to enforce.

2. This action is also brought by these two employees against their collective bargaining representatives, Local 2602 of the United Steel Workers of America, hereinafter referred to as "Local 2602", and against the International Representative of Local 2602, the United Steel Workers of America, International, for breach of their duty to fairly represent these two employees under Section 9(a) of the National Labor Relations Act, 29 U.S.C. § 159(a).

3. This action against all Defendants presents special federal questions under, and jurisdiction is founded upon, Section 301 of the Labor Management Relations Act of 1947, c.120, Title III, Section 301, 61 Stats. 156, 29 U.S.C.A. § 185, as amended, without respect to amount in controversy or diversity of citizenship of the parties.

PARTIES

4. Plaintiff, Donald Flowers, is an individual residing at 78 Weisner Road, Lackawanna, New York. At all times material to this action, he was an employee of the Bethlehem Steel Corporation at the Lackawanna, New York, plant, and he was a member of Local 2602.

5. Plaintiff, King E. Jones, is an individual residing at 98 Alexander Place, Buffalo, New York. At all times material to this action, he was an employee of the Bethlehem Steel Corporation at the Lackawanna, New York, plant, and he was a member of Local 2602.

6. Defendant, Local 2602, with a principal place of business at Ridge Road, Lackawanna, New York, and the United Steel Workers of America, International, with a

principal place of business at Five Gateway Center, Pittsburgh, Pennsylvania, are unincorporated associations and at all times material to this claim were "labor organizations" under LMRA § 501(3), and are the exclusive bargaining representatives of certain employees of this Employer-Defendant, including these Plaintiffs, pursuant to a collective bargaining agreement between Local 2602 and the International with this Employer-Defendant, dated August 1, 1974 through August 1, 1977.

7. The Employer-Defendant, Bethlehem Steel Corporation, is a corporation doing business in the State of New York, with a principal place of business in Lackawanna, New York, and at all times material to this claim was and is engaged in an industry substantially affecting interstate commerce within the meaning of the Labor Management Relations Act, § 501.

VENUE

8. Venue for this action lies in the United States District Court for the Western District of New York, the district where the claim arose, 28 U.S.C. § 1391(b). The Defendant-Corporate Employer does business in that district, 28 U.S.C. § 1391(c). The United States District Court for the Western District of New York is deemed to have jurisdiction over a labor organization in the district in which such organization maintains its principal office (Local 2602), or in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members (International), LMRA § 301(c), 29 U.S.C. § 185(c).

FACTUAL ALLEGATIONS

9. At all times material to this claim, the Plaintiffs were employees of the Defendant, Bethlehem Steel Corporation, and were dues paying members of Local 2602 of the United Steel Workers of America, and of the United Steel Workers of America, International.

10. Plaintiffs were craftsmen welders and were traditionally assigned to the Employer's Garage Department (Department No. 342), at all times material to this claim.

11. The Plaintiffs' respective seniority dates are, for the Plaintiff, Donald Flowers, February 18, 1959, and for the Plaintiff, King E. Jones, August 24, 1966.

12. Donald Flowers has been laid off or erroneously reassigned as of November 8, 1975. King E. Jones has been laid off or erroneously reassigned on or about the same date.

COUNT I

13. The Employer had a collective bargaining agreement with the United Steel Workers of America, from August 1, 1974, until August 1, 1977, which was subscribed to by Local 2602.

14. While either one or both Plaintiffs were laid off or assigned to non-craftsmen welder work, the Employer had craftsmen welder work performed by non-craftsmen welders in the 461 Department, and/or by the mobile equipment mechanics, and/or by other non-craftsmen welders, and/or by contracting out such work.

15. There was sufficient craftsmen welder work for Plaintiffs to perform during the period of their layoffs or reassignment.

16. The Employer's refusal to assign or recall either or both of the Plaintiffs to perform such work was in violation of the following provisions of the collective bargaining agreement:

Article II, Section 1(d)—Race Discrimination
Article V—Job Classifications and Incentives
Article X—Seniority
Article XI—Adjustment of Grievances
Article XIII—Management Functions
Article XIV—Safety and Health

17. The Employer's failure to assign or recall either or both of the Plaintiffs to perform craftsmen welder work created numerous safety hazzards and endangered the safety, health and physical well-being of the Employer's work force.

18. Unclassified, non-craftsmen welders were assigned by the Employer to perform craftsmen welder work.

19. At least 10 or 12 of the unskilled, non-craftsmen welders (mobile equipment mechanics) who had been assigned craftsmen welding work during the period of the Plaintiffs' layoff and/or recall, had previously taken the craftsmen welding test and had failed.

20. The Employer's failure to assign or recall either or both of the Plaintiffs to perform craftsmen welder work was in violation of various safety rules, procedures and practices of the Employer.

COUNT II

21. The Plaintiffs filed four grievances concerning these violations, Grievances No. 74-08206, 74-08213, 74-08512, 74-10215.

22. The matter proceeded to arbitration on September 8, 1977. The arbitrator was Joseph M. Sharnoff. The Employer was represented, principally, by Donald S. Bauman, Esq. The grievants were represented by Local 2602 International Staff Representative Sal Amarante.

23. The arbitrator denied the above grievances in an award dated February 24, 1978.

24. That award is not binding upon the Plaintiffs because of the inept and haphazard manner in which the representative for Local 2602 and the International (Amarante) handled the above arbitration.

25. Amarante, on behalf of Local 2602 and the International, failed to adequately prepare for the arbitration

and engaged in little or no investigation of the facts comprising this arbitration.

26. Amarante, on behalf of Local 2602 and the International, was not merely negligent, but was reckless, careless and failed to give due consideration with respect to his preparation, investigation and handling of this arbitration.

27. Amarante's conduct in handling this arbitration is only one incident in a pattern or practice of conduct engaged in by Local 2602 since approximately 1971-1972 whereby Local 2602 has arbitrarily and capriciously failed to fully and timely prosecute meritorious grievances filed by 2602 members.

28. Amarante, acting on behalf of Local 2602 and the International, knowingly failed to call qualified and available union witnesses to testify as to essential, relevant and material matters during the arbitration hearing.

29. Amarante, acting on behalf of Local 2602 and the International, arbitrarily and capriciously failed to have testify numerous union witnesses, whose testimony was of significant importance to an adequate presentation of the grievances.

30. Amarante, acting on behalf of Local 2602 and the International, failed to adequately question those union witnesses who did testify.

31. Amarante's questioning of the union and company witnesses failed to adequately disclose the Employer's breach of the collective bargaining agreement and safety procedures, rules and practices. He failed to effectively cross examine company witnesses and failed to effectively examine union witnesses.

32. During the course of the arbitration hearing, Amarante failed to present competent, relevant, material and available and known evidence of the Employer's

breach of the collective bargaining agreement and safety regulations, policies and practices.

33. Such evidence was offered to Amarante by the grievants and other union members of Local 2602, but Amarante, without justification or reason, refused to present, or otherwise utilize such known and available evidence of the Employer's breach of the collective bargaining agreement.

34. Amarante's preparation, investigation and handling of this investigation was so inept and careless as to be arbitrary and capricious, denying the Plaintiffs a fair hearing on their grievance. Because of Amarante's inept handling of this arbitration, Local 2602 and the International consequently breached the duty of fair representation, which they owed to the Plaintiffs, all in violation of Section 9(a) of the National Labor Relations Act, 29 U.S.C. § 195(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court assume jurisdiction of this cause, and:

(a) Order the Defendant-Employer to account for all wages, benefits and increments, which the Plaintiffs would have received, from the dates of their unlawful layoff or reassignments, respectively, to the date of this Order.

(b) Order all of the Defendants to reimburse or compensate the Plaintiffs for all damages suffered by them as a result of the Employer's breach of the collective bargaining agreement and Local 2602's and the International's breach of their duty of fair representation.

(c) Apportion the imposition of liability and the damages to be paid by each Defendant, as the Court deems just.

(d) To enjoin the Defendant-Employer from continuing in his violations of the collective bargaining agreement, as hereinabove alleged.

(e) Allow Plaintiffs their costs herein, as well as attorneys fees, and grant to Plaintiffs such further and alternative relief as this Court may deem to be just and appropriate.

LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES

/s/ Eugene W. Salisbury
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DATED: Buffalo, New York
January 17, 1979

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. 79-40

DONALD C. FLOWERS
78 Wiesner Road
Lackawanna, New York

-and-

KING E. JONES
96 Alexander Place
Buffalo, New York,

Plaintiffs

vs

LOCAL 2602 UNITED STEELWORKERS OF AMERICA, and UNITED STEELWORKERS OF AMERICA INTERNATIONAL, and BETHLEHEM STEEL CORPORATION,

Defendants

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT

SIRS:

PLEASE TAKE NOTICE, that the United Steelworkers of America, AFL-CIO, and the United Steelworkers of America Local 2602, by their attorneys McMahon & Crotty (Thomas P. McMahon, Esq, and E. Joseph Giroux, Jr., Esq. of counsel) will move this Court at a term thereof to be held at the United States Courthouse in the City of Buffalo, New York, at Part II of said Court, on the 20th day of April, 1979, at 9:00 o'clock in the forenoon of that date or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 12(b)(6) dismissing the complaint in this action, on the grounds that the complaint fails to state a claim upon which relief can be granted in that the claims set forth in the complaint arose more than ninety (90) days prior to the filing of the

complaint and are, therefore, barred by the applicable Statute of Limitations as set forth in Section 7511(a) of the New York Civil Practice Law and Rules.

This motion is made upon the attached memorandum and exhibits and the complaint in the case.

DATED: Buffalo, New York,
March 15th, 1979

Yours, etc.,

McMAHON & CROTTY

BY: /s/ E. Joseph Giroux, Jr.
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TO:

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EXHIBIT TO MOTION OF DEFENDANT UNIONS TO DISMISS COMPLAINT

Exhibit 1—Article XI—Adjustment of Grievances, Collective Bargaining Agreement attached to U.S.W. Motion.

ARTICLE XI—ADJUSTMENT OF COMPLAINTS AND GRIEVANCES

Section 1. Purpose

(a) Should any differences arise between the Company and the Union as to the meaning and application of the provisions of this Agreement or as to any question relating to the wages, hours of work and other conditions of employment of any Employee, there shall not be any suspension of work on account of such differences, but an earnest effort shall be made to settle them promptly and in accordance with the provisions of this Agreement in the manner hereinafter set forth.

(b) *Definitions:* When used herein, the following terms have the meanings indicated:

1. The term "complaint," as used in Sections 1 and 2 of this Article, shall be interpreted to mean a request or complaint.

2. The term "superintendent" shall mean the department superintendent or his designated representative from his office if the department superintendent is unavailable.

3. The term "Management's Representative" shall mean the Plant Management's Representative or his designated representative from his office.

4. The term "Grievance Committeeman" shall mean the Grievance Committeeman or his designated representative if the Grievance Committeeman is unavailable.

(c) *Failure to Appeal:* If the decision of the Company representative in any Step of the complaint and grievance procedure with respect to a complaint or grievance shall not be appealed to the next Step within the time specified for such appeal, such complaint or grievance shall be considered settled on the basis of the decision made by the Company representative, and the Employee or Employees covered by such complaint or grievance shall not have any further right or remedy with respect to any claim or matter covered by such complaint or grievance.

(d) *Presenting the Complaint:* Except as otherwise expressly provided in this Agreement, any complaint to be considered in the complaint and grievance procedure shall be discussed with the foreman within 30 calendar days, after the date on which the facts or events upon which the complaint is based shall have existed or reasonably should have become known to the Employee or Employees affected thereby; provided, however, that any request for any change in any of the terms or provisions of this Agreement shall not be handled in this procedure for adjustment of complaints and grievances.

(e) *Modification at Plant Level:* The procedural steps for the settlement of complaints or grievances hereinafter in this Article set forth shall constitute a general standard which may be modified at any Plant by agreement between the Management and the Union, if, in the interest of prompt and orderly settlement of complaints or grievances, it shall be deemed advisable that such procedural steps be so modified.

Section 2. Procedure

STEP No. 1—ORAL

Discussion with Foreman: If an Employee believes that he has a justifiable complaint, he may discuss such complaint with his foreman, with or without an Assistant Grievance Committeeman employed in the designated

area being present, as he may elect, in an attempt to settle the matter. Any such Employee may, however, if he so desires, report the matter directly to such Assistant Grievance Committeeman and in such event such Assistant Grievance Committeeman, if he believes the complaint merits discussion, shall take it up with the Employee's foreman in a sincere effort to resolve the problem. The Employee involved shall be present in such discussion.

Additional Representatives: If the parties, after full discussion, feel the need for aid in arriving at a solution, they may by agreement invite such additional Management or Union representatives or witnesses from the Plant as may be necessary and available to participate in further discussion, but such additional representatives shall not relieve the local participants from responsibility to arrive at a solution of the complaint.

Authority of Parties: The foreman shall have the authority to settle the complaint. The Assistant Grievance Committeeman shall have the authority to settle, withdraw or appeal the complaint.

Discussion and Response: The foreman shall at the end of the final Step No. 1 meeting give his response to the complaint. Only if additional information or facts are necessary may the response be delayed, but not for more than 3 days (excluding Saturdays, Sundays and holidays) after the final meeting. If the complaint is not settled in the forgoing procedure, an Appeal Form shall be prepared by the foreman. Upon request, two copies of the Appeal Form shall be furnished to the Assistant Grievance Committeeman from the designated area and it shall be signed by the affected Employee or Employees. The Appeal Form must contain the following information:

Appeal Form

Name .....
Badge No. .....
Department .....
Type of complaint .....
Date of initial complaint with foreman .....
Date of foreman's oral response .....
Date settled .....
Date withdrawn .....
Date appealed to Step No. 2 .....
Foreman's signature .....
Grievance Committeeman's signature .....
Signature of Affected Employee(s) .....
Date of Step No. 2 Disposition .....
Superintendent's signature .....
Date Received by Assistant Grievance Committeeman ...
Assistant Grievance Committeeman's signature .....

Purpose, Withdrawal: The foregoing procedure of direct communication and discussion should result in a full disclosure of facts and should lead to a fair and speedy solution of most of the complaints arising out of the day-to-day operations of the Plant. The settlement of a complaint in Step No. 1 shall be without prejudice to the position of either party. If the complaint concerns only the rights of the individual or individuals involved, and its settlement will have no adverse effect on the rights of other Employees, the individual or individuals involved may withdraw the complaint.

Appeal to Step No. 2: If the complaint is not settled in Step No. 1 and the Assistant Grievance Committeeman from the designated area determines that it constitutes a meritorious complaint, he may appeal it to Step No. 2 by making the appropriate notation on the Appeal Form

and furnishing the superintendent with a copy of such Appeal Form.

Unless such complaint shall be appealed to such superintendent with 7 calendar days (excluding Saturdays, Sundays and holidays) after receipt of the Appeal Form by the Assistant Grievance Committeeman from the designated area from such foreman, such complaint shall be deemed to have been settled in accordance with the Step No. 1 disposition.

STEP NO. 2—ORAL

Discussions and Processing: If such complaint shall be so appealed it shall be discussed in an effort to settle it between a Grievance Committeeman and the superintendent. The Grievance Committeeman and the superintendent shall be responsible for conducting a Step No. 2 discussion. Other Step No. 2 participants shall include the Employee and the foreman involved and such other witnesses whom they may, by agreement, invite. Such additional participants shall not relieve the superintendent and the Grievance Committeeman from responsibility to arrive at a solution of the complaint. The discussion shall be held and such superintendent shall dispose of such complaint within not more than 7 calendar days (excluding Saturdays, Sundays and holidays) after the date on which such complaint shall have been so appealed to such superintendent.

Authority of Parties: The superintendent shall have authority to settle the complaint. The Grievance Committeeman shall have the authority to settle, withdraw or appeal the complaint.

If the complaint is settled in Step No. 2, a written notification of the disposition of such complaint shall be made on the Appeal form. The resolution of a complaint in Step No. 2 shall be without prejudice to the position of either party.

Grievance Record and Appeal: If the complaint is not resolved in Step No. 2, the oral disposition and the date thereof shall be noted on the Appeal Form, two copies of which shall be furnished to the Grievance Committeeman on the date of such oral disposition. The Grievance Committeeman may file with the superintendent within 2 calendar days (excluding Saturdays, Sundays and holidays) of receipt of the Appeal Form, a written statement of the grievance. The Grievance Committeeman and the superintendent shall within 5 calendar days (excluding Saturdays, Sundays and holidays) of the receipt by the superintendent of the written statement of the grievance jointly develop a written grievance record (hereinafter referred to as the grievance record).

The grievance record shall contain a statement of the grievance (prepared by the Grievance Committeeman), all agreed-to facts, all facts disputed by either party, contractual reliance, the remedy sought, and the response and reason for the position of the superintendent. If such grievance is not settled through the development of the grievance record, the Grievance Committeeman may within 5 calendar days (excluding Saturdays, Sundays and holidays) of receipt of the grievance record appeal the grievance and grievance record to Step No. 3 of the procedure.

Complaints Occurring Under More Than One Foreman: Complaints which allege violations directly affecting only the Employees working under a particular department superintendent but under more than one foreman shall be initiated in Step No. 2 and be processed in accordance with the foregoing Step No. 2 procedure.

STEP NO. 3—WRITTEN

Discussion: A grievance which shall not be settled by the procedure prescribed in the foregoing Step No. 2 shall be discussed promptly at a mutually satisfactory time between the Management's Representative and the

Grievance Committee and a Local Union representative as the Committee may select. At any meeting with the Grievance Committee the Management's Representative may be accompanied by such other representatives of the Management as he shall select.

Time of Discussions and Appeal: Unless otherwise agreed, such grievance shall be discussed at a Step No. 3 meeting which shall be held not later than 9 calendar days (excluding Saturdays, Sundays and holidays) after such grievance shall have been presented to the Management's Representative. If the Management's Representative shall fail to provide an opportunity for discussion of such grievance within such 9 calendar days (excluding Saturdays, Sundays and holidays) such grievance may be appealed to Step No. 4, unless an extension of time shall have been mutually agreed upon.

Incomplete Grievance Record: No grievance appealed from Step No. 2 shall be considered in Step No. 3 in the absence of a full grievance record, unless the facts are not available to the Step No. 2 participants. If additional facts are needed the grievance shall be referred back for further consideration or discussion in the appropriate prior step. The time limits as set forth in Step No. 2 will apply.

In the case of grievances filed directly in Step No. 3, either party may call witnesses whose attendance shall be limited to time required for their testimony.

Authority of Parties: The Management's Representative shall have the authority to settle any grievance before him. The Grievance Committee shall have the authority to settle or withdraw any grievance.

Minutes of Meeting: Minutes of each meeting under this Step No. 3 shall be prepared by the Management's Representative and shall be signed by the chairman or secretary of the Grievance Committee and the Management's Representative not later than 10 calendar days

after the date on which such meeting shall have been held. Such minutes shall be typewritten and shall conform substantially to the following outline:

(a) Date and place of meeting.

(b) Names and positions of those present.

(c) Identifying number and description of each grievance discussed.

(d) Brief statement of the facts and the Union's position with regard to each grievance.

(e) Brief statement of the facts and the Company's position with regard to each grievance.

(f) Action taken at such meeting with regard to each grievance.

(g) Statement as to whether or not the Union concurred in such action and of any exceptions taken by the Union thereto.

The Step No. 3 minutes need not duplicate the information contained in the grievance record developed in Step No. 2 and the Step No. 3 minutes shall be added to and form a part of the grievance record.

Appeal and Settlement: If an appeal from the action taken with regard to any grievance in accordance with the procedure under this Step No. 3 as shown in the grievance record of the meeting at which such action shall have been taken shall not be made within 30 calendar days after the date of such meeting or within 20 calendar days after a draft of the minutes of such meeting shall first have been received by a representative of the Union, whichever of those periods shall last expire, such grievance shall be deemed to have been settled in accordance with such action and no appeal therefrom shall thereafter be taken. In exceptional cases, however, where the Union can satisfactorily demonstrate that the failure of the Union representative charged with the responsibility for such appeal

was caused by conditions justifiable under the circumstances and does, in fact, appeal within 10 days from the date of the default, the appeal shall be accepted as though it had been timely. The Company's liability for any retroactive payments resulting from the application of the preceding sentence shall exclude the period of the delay in the appeal.

Multi-Department Grievances: Grievances which allege violations directly affecting Employees working under more than one department superintendent shall be initiated in Step No. 3 and, if discussion fails to settle a grievance, the Step No. 3 representatives shall develop the grievance record and it shall be processed in accordance with the foregoing Step No. 3 procedure.

STEP NO. 4—WRITTEN

Step No. 4 Representation: Any complaint or grievance which shall not be settled by the procedure prescribed in the foregoing Steps Nos. 1, 2, and 3 shall be discussed in an attempt to reach a mutually satisfactory settlement thereof between two representatives of the International Union who shall be certified to the Company in writing as the representatives selected by the Union for the purpose and two representatives of the Company who shall be similarly certified by the Company to the Union and may also include a Plant representative of the Union if the Company is represented by a Plant representative. Notice of the intention of either party to take up a grievance under this Step No. 4 shall be given to the other party in writing within 30 calendar days after the date of the meeting under Step No. 3 at which action with regard to such grievance shall have been taken or within 20 calendar days after a draft of the minutes of such meeting shall first have been received by a representative of the Union, whichever of those periods shall last expire.

A grievance shall not be processed in this step until a full grievance record has been developed. In the event

that a complete record has not been developed, the grievance shall be referred back for further consideration in Step No. 2 or Step No. 3 of the procedure.

Notice of Appeal: In order for a grievance to be considered in Step No. 4, the notice appealing it shall be in writing signed by a certified representative of the International Union assigned to the Plant and given to the Management's Step No. 4 representative.

Time and Place: Except as otherwise agreed by the Company and the Union, meetings which shall be required under this Step No. 4 shall be held at Bethlehem, Pa. within 60 calendar days after receipt of the appeal to Step No. 4 in accordance with the preceding paragraph and the number of such meetings and any other procedure which may aid in the effort to reach a satisfactory settlement of any grievance shall be agreed upon between the certified representatives of the Company and the certified representatives of the Union.

Authority of Parties: The certified Company representatives shall have the authority to settle this grievance. The certified representatives of the International Union shall have the authority to settle, withdraw or appeal the grievance to arbitration.

Minutes of Meeting: Minutes of each meeting for the discussion of grievances under this Step No. 4 shall be prepared by the certified representatives of the Company (and when appropriate shall reflect changes in the positions of the parties) and shall be signed by them and the representatives of the Union within 30 calendar days after such meeting shall be held.

Time Limits on Appeal: If an appeal from the action taken with regard to any grievance in accordance with the procedure under this Step No. 4 as shown in the minutes of the meeting at which such action shall have been taken shall not be made within 30 calendar days

after the date of the meeting or within 20 calendar days after a draft of the minutes of such meeting shall first have been received by a certified representative of the Union, whichever of these periods shall last expire, such grievance shall be deemed to have been settled in accordance with such action and no appeal therefrom shall thereafter be taken.

Section 3. Unresolved Step No. 4 Cases

(a) *Appeals to Arbitration:* The foregoing procedure, if followed in good faith by both parties, should be adequate to reach a fair and expeditious settlement of any complaint or grievance. In the event, however, that the procedure hereinbefore in Section 2 of this Article set forth shall have been followed in respect of any complaint or subsequent grievance and such grievance shall not thereby have been satisfactorily settled and if such grievance shall involve the meaning and application of the provisions of this Agreement, it may be appealed by giving notice in writing to the Company, within 30 calendar days after the date of the meeting at which discussion of such grievance under Step No. 4 shall have been completed, or within 20 calendar days after a draft of the minutes of such meeting shall first have been received by a certified representative of the Union, whichever of those periods shall last expire, and to an impartial umpire to be appointed by mutual agreement of the parties hereto.

(b) *Pre-Hearing Briefing Procedure*

(1) *General*

Not later than 50 days prior to the commencement of the arbitration hearing at which a grievance is scheduled to be heard, the Union's Step No. 4 representative shall file with the impartial umpire, the Manager of Labor Relations of the Company and the Director of the Contract Administration Depart-

ment of the Union, a pre-hearing brief setting forth the Union's position with respect to such grievance. The Manager of Labor Relations shall file with the impartial umpire, the Union's Step No. 4 representative and the Director of the Contract Administration Department of the Union, a pre-hearing brief setting forth the Company's position with respect to such grievance not later than 20 days prior to the commencement of such hearing; provided, however, in respect of grievances concerning disciplinary suspension, the Manager of Labor Relations of the Company, not later than 50 days prior to the commencement of the arbitration hearing at which such a grievance is to be heard, shall file with the impartial umpire, the Union's Step No. 4 representative and the Director of the Contract Administration Department of the Union, a pre-hearing brief setting forth the Company's position with respect to such grievance. The Union's Step No. 4 representative shall file with the Manager of Labor Relations of the Company, the Director of the Contract Administration Department of the Union and the impartial umpire, a pre-hearing brief setting forth the Union's position with respect to such grievance not later than 20 days prior to the commencement of such hearing. The Manager of Labor Relations shall, promptly after the appeal to arbitration of disciplinary suspension grievances, send to the impartial umpire and to the Director of the Contract Administration Department of the Union copies of the Steps Nos. 3 and 4 minutes relating to such grievances.

(2) *Discharge Grievances*

Within 15 calendar days after receipt of the Union's written notice of appeal of an Employee's discharge to the impartial umpire, the Manager of Labor Relations of the Company shall file with the impartial umpire, the Union's Step No. 4 represen-

tative and the Director of the Contract Administration Department of the Union a pre-hearing brief setting forth the Company's position with respect to such grievance, and the Union's Step No. 4 representative shall file with the Manager of Labor Relations of the Company, the Director of the Contract Administration Department of the Union and the impartial umpire a pre-hearing brief setting forth the Union's position with respect to such grievance within 15 calendar days after receipt of the Company's prehearing brief.

All pre-hearing briefs filed with the impartial umpire shall fully disclose the material facts and arguments which are to be presented to him by the parties for his consideration. The decision of the impartial umpire will be restricted to whether the violation of the Agreement alleged in the pre-hearing brief exists and, if a violation is found, to specify the remedy in accordance with the terms of the Agreement.

(c) *Wage Inequity Claims:* Except as in this Agreement otherwise expressly provided, any grievance which shall involve any claim that any then existing wage rate should be changed shall not be submitted to arbitration under the provisions of this Section, unless the Company and the Union shall specifically agree in writing so to submit such grievance or unless such claim is that such wage rate was established or increased or decreased in contravention of the provisions of this Agreement.

(d) *Umpire's Authority:* An impartial umpire to whom any grievance shall be submitted in accordance with the provisions of this Section shall, in so far as shall be necessary to the determination of such grievance, have authority to interpret and apply the provisions of this Agreement, but he shall not have authority to alter in any way any of such provisions. The impartial umpire shall also have similar authority with respect to the Insurance Agreement between the parties (including

the Program of Insurance Benefits (PIB)) and shall be limited to the application of the terms of the Insurance Agreement (including PIB) to the extent necessary to determine the disposition of grievances properly arising under Article XXI of this Agreement.

(e) *Decisions—Final and Binding:* The appointment of such impartial umpire as hereinbefore provided and his decision on any matter which shall properly have been referred to him shall be final and binding upon the Company, the Union and all Employees concerned therein.

(f) *Umpire's Compensation:* The compensation of such impartial umpire for his services hereunder and his expenses in connection therewith shall be shared equally by the Company and the Union.

(g) *Period Covered by Awards:* Except as in this Agreement otherwise expressly provided, an award of the impartial umpire in respect of any grievance which shall be so submitted to him shall not in any case be made retroactive to a date prior to the date on which the initial complaint shall have been first discussed in the procedure set forth in Section 2 of this Article. An award of the impartial umpire in respect to any grievance in respect of rates of pay (other than a grievance arising out of the provisions of Article V of this Agreement), overtime compensation, call-in pay, shift premiums, suspensions, seniority, holidays and vacations shall be made retroactive to the date of the occurrence or non-occurrence of the event upon which the grievance is based, but in no case prior to a date 30 calendar days before the complaint shall have been initially presented in such procedure.

Section 4. Union Complaint and Grievance Procedure

(a) *Plant Grievance Committee:* There shall be one Grievance Committee at each Plant, which shall consist of such number of Employees as shall be mutually agreed upon between the Management's Representative and the

Union, but the number thereof shall not in any case be less than 3 nor more than 10.

(b) In each Local Union at the Plant the number of Assistant Grievance Committeemen shall be not more than one per 60 Employees.

(c) *Time Off For Assistant Grievance Committeeman:* If any Assistant Grievance Committeeman of the Union shall so request of his foreman, he shall be granted such time off without pay as he may reasonably require for the purpose of investigating the facts with regard to and of endeavoring to settle any complaint in Step No. 1 or Step No. 2 in his department and for the purpose of attending Step No. 2 discussions concerning complaints which he has processed in Step No. 1.

(d) *Discipline—Right to Representation:* Any Employee who is summoned to meet in an enclosed office with a supervisor for the purpose of discussing possible disciplinary action shall be entitled to be accompanied by the Assistant Grievance Committeeman designated for the area if he requests such representation, provided such representative is available during the shift.

(e) *Time Off For Grievance Committeeman:* If any member of the Grievance Committee shall so request of his foreman, he shall be granted such time off without pay as he may reasonably require for the purpose of investigating and of endeavoring to settle any complaint in Step No. 2 or grievance in Step No. 3 with which he shall be concerned and, by request to the Management's Representative, he shall be permitted to visit any department other than his own, when a visit there is necessary for such purposes.

(f) *Union Plant Visits:* If a representative of the Union who shall have been certified to the Company in writing as the Union's representative for the purpose of handling grievances in Step No. 4 from a particular Plant shall so request of the Management's Representa-

tive, he shall be permitted to visit such Plant for the purpose of investigating any grievance which shall have been appealed therefrom to Step No. 4, subject to such regulations as shall be established by the Management's Representative.

(g) *Group Complaints:* In the case of a complaint involving a large group of Employees, a representative number may participate in the oral discussion in Step No. 1 and Step No. 2 of the procedure.

Section 5. Employee Discipline Records

(a) *Time Limits on Use:* The Company in arbitration proceedings will not make use of any personnel records of previous disciplinary action against the Employee involved where the disciplinary action occurred 5 or more years prior to the date of the event which is the subject of such arbitration.

(b) Written records of disciplinary action against the Employee involved for the violation of a safety rule but not involving a penalty of time off will not be used by the Company in any arbitration proceeding where such action occurred one or more years prior to the date of the event which is the subject of such arbitration.

Section 6. Company Obligations to Union

Grievances Alleging Violations: The complaint and grievance procedure may be utilized by the Union in processing grievances which allege a violation of the obligations of the Company to the Union as such. In processing such grievances, the Union shall observe the specified time limits in appealing and the Company shall observe the specified time limits answering. In the event an Employee dies, the Union may process, on behalf of his survivors, any claim he would have had to any monies due under any provision of this Agreement.

Section 7. Initiating Complaints or Filing Grievances

Referral to Proper Step: Complaints or grievances which are not presented initially in the proper Step of the complaint and grievance procedure shall be referred to the proper Step for discussion and answer by the Company and Union representatives designated to handle complaints or grievances in such Step.

Section 8. Grievance Under Prior Agreement

Applicable Contract: Any complaint or grievance which was presented under a prior agreement between the Company and the Union and which is still pending and not finally disposed of by August 1, 1974, shall be determined in accordance with the applicable provisions of such prior agreement which were in effect at the time when such grievance arose.

Section 9. Grievance Procedure—Proper Functioning

Committee for Review: If at any time during the term of this Agreement it is agreed by the International Union and the Company that the complaint and grievance procedure at a Plant is functioning in such a manner as to be unsatisfactory in giving prompt attention to complaints and grievances or that a problem requiring special attention has developed in the functioning of the arbitration procedure, a committee shall be established consisting of an agreed-upon number of persons from each party for the purpose of reviewing the functioning of the complaint and grievance procedure in question or the arbitration procedure problem. The committee so established shall be authorized to make such recommendations as it deems proper with respect to the matter to the Chairman of the Bethlehem Union Negotiating Committee and the Manager of Labor Relations. Such committee shall be discontinued after it has completed its review and report.

Section 10. Exception to Normal Filing Procedure

Chairman of Grievance Committee Initiates: The Chairman of the Union's Plant Grievance Committee may file grievances in writing directly into Step No. 3, if he believes this to be necessary, concerning alleged violations of Article II, Sections 1(d) and 3, and Article V, Sections 2 and 3, in conformity with the provisions of Article XI except that the signature of affected Employees shall not be required.

Exhibit 2—Grievance 74-08206

BETHLEHEM STEEL CORPORATION AND SUBSIDIARY COMPANIES

APPEAL FORM

Name of Employee: Donald J. Flowers	Clock Number: 342-68	Department: 342
Type of Complaint: Contracting out	Date of Incident: Past 30 days	
Date of Written Complaint: 5/15/75	Date of Foreman's Oral Response: 5/15/75	Date Settled:	Date Withdrawn:
Foreman's Signature: Joseph F Cipressi	Date Received by Assistant Grievance Committeeman: 5/5/75	
Signature of Affected Employee(s): D. C. F Flowers	Assistant Grievance Committeeman's Signature: D. C. F Flowers	
	Date of Appeal to Step No. 2: 5/5/75	
	Step No. 2 Disposition: Denied	Date Mailed: 8/13/75
The settlement of a complaint in Step No. 1 or Step No. 2 shall be without prejudice to the position of either party.	Safety Committeeman's Signature: J. Hilburn	
	Grievance Committeeman's Signature: A. Mauti 8-13-75	

Canary—Assistant Grievance Committeeman's Copies (2)
Canary—Grievance Committeeman's Copies (2)

Pink—Superintendent's Copy
Green—Foreman's Copy

GRV

This is another in what appears to be a never-ending string of complaints on the same subject. The grievant has *never* done all the welding in the Garage (342), and never could. As necessary, we have regularly obtained help from various mechanical shops in the Plant (structural, plate, machine, pipe shops, for example) and we intend to continue the practice. In the meantime, it is apparently the desire of the grievant to negotiate some kind of essential, irreplacable status for himself, perhaps to minimize the possibility of lay-off. We do not consider such desires to be properly included in the grievance procedure.

Signature of Superintendent

/s/ [Illegible]

Date—8/19/75

Date of Appeal by Grievance Committeeman to Management's Representative

8/21/75

Date of Event	*Employee*
Past 30 days	342-68 D. Flowers

DISPUTED FACTS

(Superintendent and Grievance Committeeman)

Whether or not the Agreement has been violated.

UNITED STEELWORKERS OF AMERICA
LOCAL UNION NO. 2602

GRIEVANCE RECORD

D. Flowers, 342-68

STATEMENT OF GRIEVANCE
(Grievance Committeeman)

This grievance is being submitted to protest the Company assignment of 342 Welder work to the 461 Department that has historically and exclusively been performed by the 342 welder. A list of dates and jobs was presented at Step #2 on 7/11/75 for review and resolution of the problem. In addition, the method of pay calculation has been subject of dispute time and time again. There should be one standard established for like and similar work.

Deny This

DENIED
DECS 10 P
2609

REMEDY SOUGHT
(Grievance Committeeman)

The Union contends that the 342 welder work should be returned and the grievant should be made whole for all monies lost.

CONTRACTUAL RELIANCE
(Grievance Committeeman)

The Union claims violation of Article II, Section 1(d), 3, Article V, X, XI and XIII of the Main Agreement.

/s/ A. Marotto
8-13-75

Date of Meeting
9-25-75

Grievance Record
No. 74-08206

ADDITIONS

STEP NO. 3 MEETING

Local No. 2602

(Flowers—461 doing 342 work)

ATTENDANCE
Garage

Sep. 26 1975

FOR THE UNION	FOR THE MANAGEMENT
A. Marotto	R. R. Walther
C. Walters	

ADDITIONAL FACTS NOT AVAILABLE TO THE STEP NO. 2 PARTICIPANTS:

UNION POSITION:

MANAGEMENT POSITION:

The Union and Management mutually agreed to remand Grievance No. 74-08206 to Step No. 2 of the Grievance Procedure for the purpose of providing the Union with dates when this type or similar types of work has been performed by the Mechanical Department Shops, prior to the date of the aggrieved incident.

For the Union

/s/ A. Marotto Date of Signature—9-26-75

For the Management

/s/ R. R. Walters Date of Signature—9-26-75

Exhibit 3—Grievance 74-08213

Dan - Pat - J Bowles	3-12-69	34.2
Violation of J.C.B.A. Art. 8 H.S. 4 (H)	Date of Event 5/15/75	
Date of Initial Discussion 5/15/75	Date of Appeal to Step No. 1 5-15-75	Date Denied
Joseph Cipriani		Date Received by Union and Grievance Committeeman 5/15/75
Department or Agencies Involved D. C. F. Bowles		Union and Grievance Committeeman's Decision D C F Bowles
		Date of Appeal to Step No. 2 5/15/75
		Step No. 1 Disposition Denied — Date Mailed 7/11/75
The settlement of a complaint in Step No. 1 or Step No. 2 shall be without prejudice to the position of either party.		Superintendent's Signature J M Sinnamon
		Grievance Committeeman's Signature J Morretta 7-11-75

Canary—Assistant Grievance Committeeman's Copies (2)
Canary—Grievance Committeeman's Copies (2)
Pink—Superintendent's Copy
Green—Foreman's Copy

5

Date of Event	*Employee*
Various	342-68 D. Flowers

DISPUTED FACTS

(Superintendent and Grievance Committeeman)

Whether or not the Agreement has been violated.

UNITED STEELWORKERS OF AMERICA
LOCAL UNION NO. 2602

GRIEVANCE RECORD

D. Flowers—342-68

STATEMENT OF GRIEVANCE
(Grievance Committeeman)

This grievance is being written to protest the M.E.M. personnel doing welding in the 342 Department. They are causing an unsafe practice since they were not tested on their welding qualifications and are not qualified welders. Some dates that the incident occurred are—April 14 & 15, 1975—body and fender—rebuilt rear end of water flusher (welded angles & brackets on bumper). April 13, 1975, 3 to 11 turn, truck #27—MEM welded lower tail gate hooks and side of dump body, also welded angles inside body. They finished on 3 to 11 turn Wed. 4-23-75.

H/A w/74-08206)
08512) Step 4
10215)

REMEDY SOUGHT
(Grievance Committeeman)

The Union demands that this work be returned to the qualified welder and the grievant should be made whole for all monies lost.

CONTRACTUAL RELIANCE
(Grievance Committeeman)

Violation of Article II, sec. 1(d), 3, Articles V, X, XI, XIII & XIV of Main Agreement.

SIGNATURE OF GRIEVANCE COMMITTEEMAN

/s/ A. Marotto—7-11-75

The grievant would be hard-pressed to prove that our mobile equipment mechanics are categorically "not qualified welders." Furthermore, there would seem to be some risk that any standards he proposed might be applied to his own work. Our mechanics have traditionally done welding from time to time, and regardless of the persistent, defensive haranguing of the grievant, it is our intention to *continue* having welding work done by mechanics (as noted before, welding *is* part of the job description for mobile equipment mechanics.)

Signature of Superintendent

/s/ [Illegible] Date—7/21/75

Date of Appeal by Grievance Committeeman
to Management's Representative 7-21-75
JM

Date of Meeting
8-8-75

Grievance Record
No. 74-08213

ADDITIONS
STEP NO. 3 MEETING
Local No. 2602

(Flowers—MEM doing welding)

ATTENDANCE

Garage

Aug. 13, 1975

FOR THE UNION	FOR THE MANAGEMENT
A. Marotto	A. H. Hein
C. Walters	R.R. Walther
I. Tricoli	

ADDITIONAL FACTS NOT AVAILABLE TO THE STEP NO. 2 PARTICIPANTS:

UNION POSITION:

The Union stated that its position is adequately set forth in the Grievance Record with the addition of the following statements:

The Union stated that the amount of welding being performed by the Mobile Equipment Mechanics and the Body and Fender Man is excessive and is creating a safety hazard. The Mobile Equipment Mechanics and Body and Fender Men are not qualified Welders. Furthermore they are taking work away from the Welder who is qualified to do that type of work.

MANAGEMENT POSITION:

The Management stated that its position is adequately set forth in the Grievance Record with the addition of the following statements:

The Management vehemently denies that the Mobile Equipment Mechanics and Body and Fender Men are creating a safety hazard by performing welding duties. The Mobile Equipment Mechanic and Body and Fender Men are qualified welders and are working well within the scope of their respective job descriptions.

The "Tools and Equipment for the Body and Fender Man is as follows:

> *Burning and welding torch*, welding machine, electric, hydraulic, and pneumatic powered hand tools, undercoating equipment, degreaser, steam cleaner, paint spray gun, oxygen and acetylene cylinders, measuring devices, tire tools, maul, hammers, wrenches, hoses, chisels, pliers.

The "Tools and Equipment" for the Mobile Equipment Mechanic is as follows:

> Various sizes and kinds of powered and hand tools, such as torque wrenches, grinders; micrometers, calipers, gauges, jacking and hoisting devices, socket wrenches, screw drivers, hammers; testing equipment, wheel balancing and alignment machines, *welding and burning equipment*, cylinder boring machine, drawings, equipment manuals, etc.

The "Working Procedure" for the Body and Fender Man is as follows:

> "Operates burning and welding torches, and welding machine to burn, weld, braze, and lead fill miscellaneous parts such as chassis, bodies and fenders." "Lays out, cuts to size, assembles and installs items such as truck bodies, cabs, benches, tailgates, safety shields, truck sides, brackets, tool boxes, control panels, using measuring devices, hand and powered tools, burning and welding equipment."

The "Working Procedure" for the Mobile Equipment Mechanic is as follows:

Repairs and rebuilds bodies and frames, etc., by straightening, welding, brazing, refinishing and painting.

It is very obvious that welding is an integral part of the job description of the Mobile Equipment Mechanic and the Body and Fender Man. Grievance No. 74-08213 is denied.

For the Union

/s/ A. Marotto Date of Signature—8-12-75

For the Management

/s/ A. Hein Date of Signature—8-12-75

Step No. 4 Meeting
January 14, 1976
Discharging Plant (2602)

Grievance Record No. 74-08213

Grievant:

D. Flowers, a Welder in the Garage Department.

Nature of Grievance:

A protest against Mobile Equipment Mechanic personnel in the Garage Department doing welding work. A further protest against employees assigned to the position of Body and Fender Man doing welding work.

The Company and the Union stated that their contentions with respect to this grievance are adequately and accurately set forth in the Grievance Record.

Disposition: The grievance was denied.

Exhibit 4—Grievance 74-08512

NAME OF EMPLOYEE: DON FLOWERS
CLOCK NUMBER: 342-68
LOCATION: 342
NATURE OF COMPLAINT: STRUCTURAL REP. & GARAGE MOBILE EQUIP MECHS. DOING WELDING
DATE & TIME: 9/29 TO SEPT 29, 1975
DATE OF INITIAL COMPLAINT: SEPT. 14, 1975
DATE OF FOREMAN'S ORAL RESPONSE: SEPT. 29, 1975
DATE APPEALED:
DATE WITHDRAWN:
EMPLOYEE'S SIGNATURE: Earl J Connors
DATE RECEIVED BY ASSISTANT GRIEVANCE COMMITTEEMAN: 9/29/75
SIGNATURE OF ASSISTANT GRIEVANCE COMMITTEEMAN'S DESIGNEE: D. C. F Lowe
DATE OF APPEAL TO STEP NO. 2: 9/29/75
D. C. F Lowe
DISPOSITION: Denied
DATE RENDERED: 12-3-75

1. The settlement of a complaint in Step No. 1 or Step No. 2 shall be without prejudice to the position of either party.

SIGNATURE OF GRIEVANCE COMMITTEEMAN'S DESIGNEE: G. Marotto 12-3-75

2 Canary—Assistant Grievance Committeeman's Copies (2)
Canary—Grievance Committeeman's Copies (2)
Pink—Superintendent's Copy
Green—Foreman's Copy

UNITED STEELWORKERS OF AMERICA
LOCAL UNION NO. 2602

GRIEVANCE RECORD

D. Flowers—342-68 & Others A.F.72

STATEMENT OF GRIEVANCE
(Grievance Committeeman)

On 11-20-75, the Union met with the Superintendent to discuss the grievant's complaint. The Superintendent had assumed that the complaint in question was the same as a previous complaint and had not been given any reports from his Foreman. The Union points out the fact that it is this lack of concern and investigation that has created many of the problems in the grievance procedure. The grievant presented a writeup which is to be made part of this grievance record and in addition offered the circumstances that existed under Grievance II 4454 (AGC-3233) and its resolution. The Union pointed out the importance of having each employee perform within their own classification such as welders doing welding work and Body & Fender men doing body and fender work, etc. The expertise in their workmanship give quality performance and improves the maintenance program.

REMEDY SOUGHT
(Grievance Committeeman)

The Union contends that the grievant and others should be recalled to their respective positions and all affected employees should be made whole for all monies lost.

CONTRACTUAL RELIANCE
(Grievance Committeeman)

Violation of Art. II, sec. 1(d), 3, 4, Articles V, X, XI, XIII & Appendix 16 of Main Agreement.

Signature of Grievance Committeeman

/s/ A. Marotto—12-3-75

Date of Event	*Employee*
8/29 to 9/29/75	342-68 D. Flowers

DISPUTED FACTS

(Superintendent and Grievance Committeeman)

Whether or not the Agreement has been violated.

SUPERINTENDENT'S RESPONSE AND DETAILED REASONS THEREFOR

Despite the "statement of grievance", this is the same basic issue raised many times by the grievant: D. Flowers feels he has the exclusive right to do welding at the garage, and the management does not agree. At this time, the grievant is on lay-off, making the issue more acute from his point of view, but it *is* still the same issue. The management insists on its historic right to have mobile equipment mechanics do some welding (after all, it is part of their job description), and also to call upon the Mechanical Department shops from time to time to supplement our own forces. It must be remembered that the welding capability at the garage was developed primarily to handle bulldozer repairs, and since this function was returned to the Locomotive Repair Shop in 1971, our needs for a full-time welder are considerably diminished. Under present levels of business, we do not need a full-time welder at all.

Signature of Superintendent

/s/ [Illegible] Date—12/9/75

Date of Appeal by Grievance Committeeman to Management Representative 12/9/75—JM

74-102 15

NAME OF EMPLOYEE: D. Flowers | CHECK NUMBER: 342-68 | DEPARTMENT: 342

TYPE OF COMPLAINT: SAFETY - MECH. CLOCK WELLERS | DATE OF EVENT: 12-8-75

DATE OF WRITTEN COMPLAINT: 12-8-75 | DATE OF FOREMAN'S ORAL RESPONSE: 12-8-75 | DATE SETTLED | DATE WITHDRAWN

FOREMAN'S SIGNATURE: Ed Farmer | DATE RECEIVED BY ASSISTANT GRIEVANCE COMMITTEEMAN'S SIGNATURE: 12-15-75

SIGNATURE OF AFFECTED EMPLOYEE(S): D Flowers | DATE OF APPEAL TO STEP NO. 2: 12/15/75

STEP NO. 2 DISPOSITION: denied | DATE MAILED: 2/13/76

SUPERINTENDENT'S SIGNATURE: M Farmer

GRIEVANCE COMMITTEEMAN'S SIGNATURE: G. Martin 2-13-76

The settlement of a complaint in Step No. 1 or Step No. 2 shall be without prejudice to the position of either party.

Canary—Assistant Grievance Committeeman's Copy (2) | Pink—Superintendent's Copy
Canary—Grievance Committeeman's Copy (1) | Green—Foreman's Copy

BETHLEHEM STEEL CORPORATION AND SUBSIDIARY COMPANIES

99

APPEAL FORM 44151 (Rev.8 10-73)

74-102 15

NAME OF EMPLOYEE: D. FLOWERS | CHECK NUMBER: 342-68 | DEPARTMENT: 342

TYPE OF COMPLAINT: CLAIMS UNJUST LAYOFF | DATE OF EVENT: 11/8/1975

DATE OF WRITTEN COMPLAINT: 1/7/76 | DATE OF FOREMAN'S ORAL RESPONSE: 1/7/76 | DATE SETTLED | DATE WITHDRAWN

FOREMAN'S SIGNATURE: Earl Connors | DATE RECEIVED BY ASSISTANT GRIEVANCE COMMITTEEMAN: 1/7/76

SIGNATURE OF AFFECTED EMPLOYEE(S): D Flowers | DATE OF APPEAL TO STEP NO. 2: 1-7-76

STEP NO. 2 DISPOSITION: denied | DATE MAILED: 2/13/76

SUPERINTENDENT'S SIGNATURE: J. Williams

GRIEVANCE COMMITTEEMAN'S SIGNATURE: G. Martin 2-13-76

The settlement of a complaint in Step No. 1 or Step No. 2 shall be without prejudice to the position of either party.

Canary—Assistant Grievance Committeeman's Copy (2) | Pink—Superintendent's Copy
Canary—Grievance Committeeman's Copy (1) | Green—Foreman's Copy

Exhibit 5—Grievance 74-10215

74 10215

D. Flowers — 342-68 — 342

Unjust Lay off

11/7/75 — 11/7/75 — 11/21/75

J. F. Cipriani

D. C. Flowers

11/14/75

D. C. Flowers

11-14-75

Denied — 2/13/76

A. Martin 2-13-76

The settlement of a complaint in Step No. 1 or Step No. 2 shall be without prejudice to the position of either party.

Canary—Assistant Grievance Committeeman's Copies (2)
Canary—Grievance Committeeman's Copies (2)
Pink—Superintendent's Copy
Green—Foreman's Copy

Went to Local Step 2

BETHLEHEM STEEL CORPORATION AND SUBSIDIARY COMPANIES

APPEAL FORM 74-10215

91

D. FLOWERS — 342-68 — 342

UNJUST LAY OFF

12-8-75 — 12-8-75

12-8-75

E. Glenn - Ovt.

D. FLOWERS

12/5/75

12/5/75

2/13/76

A. Martin 2-13-76

The settlement of a complaint in Step No. 1 or Step No. 2 shall be without prejudice to the position of either party.

Canary—Assistant Grievance Committeeman's Copies (2)
Canary—Grievance Committeeman's Copies (2)
Pink—Superintendent's Copy
Green—Foreman's Copy

Lackawanna, N.Y., Plant

UNITED STEELWORKERS OF AMERICA
LOCAL UNION NO. 2602

GRIEVANCE RECORD

D. Flowers—#342-68

STATEMENT OF GRIEVANCE
(Grievance Committeeman)

This grievance contains the issues under four appeal forms—#81, 91, 93 and 99 on a continuing basis and involves the layoff of the grievant and the use of other employees to perform his work, creating a hazardous and unsafe condition. The Step 2 discussions on 1-28-76, 1-29-76 and the investigation of the incentive contract are all to be considered part of this record. The Union illustrated during the course of these meetings and investigation, that in addition to the incentive contracts, there are witnesses from the 461 department that can testify and verify they are performing the welder work normally performed by the 342 welder. The Union had great difficulty in developing this record and did not appreciate the frustrations heap upon them in the development of the record. It is incredible that Supervisory have taken the position that although there are separate job classifications for Welder and M.E.M. that for a period in excess of two months or more, there was no requirement for the welder work when repairs are being made on a daily basis. In addition to the welding work that has been recorded on incentive contracts, there is additional welding categorized as day work, that is not recorded but being performed on a daily basis. The Union presented only a portion of the incentive contracts to the Superintendent because of the limited time it was afforded. The Union has also cautioned the Company

of contacting the O.S.H.A. agency and have them investigate the safety aspects of this garage operation.

Meeting held on 2-13-76 also to become part of this record.

REMEDY SOUGHT
(Grievance Committeeman)

The Union demands the immediate recall of the grievant and he should be made whole for all monies lost and the Company should cease and desist the combination of job assignments.

CONTRACTUAL RELIANCE
(Grievance Committeeman)

Violation of Article II, sec. 1(d), 3, Articles V, X, XI, XIII, XIV & Appendix 16 of Main Agreement.

Signature of Grievance Committeeman

/s/ A. Marotto—2-13-76

Date of Event	*Employee*
11/7 & 8/75 12/8/75	342-68 D. Flowers

DISPUTED FACTS

(Superintendent and Grievance Committeeman)

Whether or not the Agreement has been violated.

SUPERINTENDENT'S RESPONSE AND DETAILED REASONS THEREFOR

The garage has always used the services of various mechanical shops from time to time for welding (and other) work. Furthermore, mobile equipment mechanics have always performed some welding work in the course of their normal duties. In view of these continuing sources for welding work, and at present reduced levels of operation, there is no compelling reason to keep a "junior" welding specialist on the payroll while allowing "senior" employees to go on lay-off. Consequently, the welder was placed on lay-off when his turn came in the normal force-reduction sequence. In its unusually strong presentation on behalf of the grievant, the union seems almost to be disregarding the interests of its "senior" members. Indeed, with specific threats to contact O.S.H.A., and implied threats expressed in the step 2 meeting (it was suggested that the Corporation will not respond until faced with a "resolution"), one might well speculate as to just which interests *are* represented by the union.

Signature of Superintendent

/s/ [Illegible] Date—2/18/76

Date of Appeal by Grievance Committeeman to Management's Representative 2/19/76—JM

Exhibit 6—Minutes of Step 3 and Step 4 Meetings

Date of Meeting	Grievance Record
10-18-76	Nos. 74-08206, 74-08512 & 74-10215

ADDITIONS

STEP NO. 3 MEETING

Local No. 2602

ATTENDANCE

Garage Department

FOR THE UNION	FOR THE MANAGEMENT
T. Ott	J. J. McMahon
K. Blersch	R. R. Walther
D. Flowers	

ADDITIONAL FACTS NOT AVAILABLE TO THE STEP NO. 2 PARTICIPANTS:

Inasmuch as the above grievances concern the same issue, the Local Union and Management agreed to discuss these cases together.

UNION POSITION:

1. Management has violated the provisions of Article II, Article V, Article X, Article XI, Article XIII and Article XIV by allowing welding work to be performed in the Garage Department by employees other than the grievant.

2. The grievant was on layoff during the period 11-8-75 through 4-11-76. The grievant is a craft Welder and during the period of layoff, employees from the 461 Department and non-craft employees from the Garage Department performed the grievant's normal welding duties.

3. The welding work performed by non-craft employees is not of the same quality as the grievant's work. This shoddy welding may well present a hazardous condition.

4. The grievant, while at work, is paid on a secondary-indirect incentive rate of pay. Welders from the 461 Department are paid a direct incentive. The grievant, when at work, is entitled to a direct incentive payment.

5. The work in question is not of an emergency situation. Therefore it should have been performed by a Welder from the Garage Department on a regularly scheduled basis.

6. It is improper to bring Welders from another seniority unit into the Garage Department to perform welding duties while the Welder from the Garage is laid off.

7. The work performed by the Structural Repair Shop was in connection with 44" Mill butt boxes. This is a primary duty for the Garage Department Welder.

MANAGEMENT POSITION:

1. Throughout the history of the Garage Department, the Structural Repair Shop has done work for the Garage Department. During the period of 4-25-75 through 5-9-75, the Structural Repair Shop spent a total of 164 hours repairing 44" Mill Butt boxes.

2. The Job Descriptions of the Garage Department's Mobile Equipment Mechanics and Body and Fender Man both provide that these employees are required to weld.

3. Grievance No. II-4454 protested the fact that the Mobile Equipment Mechanic, Body and Fender Man and employees from the Structural Repair Shop performed the dates of the grievant while the grievant was on layoff in late 1971 and early 1972. Grievance No. II-4454 was withdrawn at Step No. 4 on 5-3-72.

4. Grievance No. 74-07672 protested the fact that the grievant was only scheduled to work four days in the week of 11-24-74 and Structural Repair Shop employees were utilized to weld 44" Mill butt boxes. Grievance No. 74-07672 was withdrawn at a Pre Arbitration Meeting on 5-10-76.

5. Management cited Arbitration Decision No. 2446, dated 6-11-76, Lackawanna Plant and Decision No. 1230, dated 1-13-66, Lackawanna Plant.

6. The grievant, while at work, is properly paid at a secondary indirect incentive.

7. The welding work performed by the Mobile Equipment Mechanic and Body and Fender Men meets all repair standards.

Management stated that based on the above facts, the request contained in Grievance Nos. 74-08206, 74-08512 and 74-10215 are denied.

For the Union

/s/ K. Blersch
/s/ T. E. Ott—A35 Date of Signature—10/18/76

For the Management

/s/ J. J. McMahon Date of Signature—10-18-76

Lackawanna Plant (2602)
Step No. 4 Meeting
December 8-9, 1976

Grievance Records Nos. 74-08206, 74-08512, and 74-10215

Grievant:

D. Flowers, 342-68, a Welder assigned to the Garage Department.

Nature of Grievance:

The Union contends that Management violated Article II, Sections 1(d) and 3; Article V; Article X; Article XI; Article XIII; Article XIV and Appendix 16, of the Agreement when it assigned the grievant's welding work to other Garage Department employees and employees of the Structural Repair Shop.

The Union stated that its contentions with respect to this grievance are, in substance, adequately and accurately set forth in the Grievance Record.

The Company stated that its contentions with respect to this grievance are, in substance, as set forth in the Grievance Record, with the following additions:

Additional Company Contentions:

It is Management's prerogative, pursuant to Article XIII, of the Agreement, to assign the work. The welding work in the Garage Department has been assigned to various employees over the years. There is ample evidence of Garage Department welding work which has been assigned to the Structural Repair Shop. The Job Descriptions for the jobs of Mobile Equipment Mechanic (Plant Code 60-5118) and Body and Fender Man (Plant Code 60-5113) clearly contemplate that employees assigned to those jobs will perform welding work.

These grievances constitute an improper attempt, in violation of Article II, Section 3(a) of the Agreement, to establish a practice where none exists. The Union has not proven nor can it prove that a practice exists which gives the grievant exclusive rights to Garage Department welding work. The Union's obligation in this regard is clearly established by *Decision No. 1609, Seward/Porter, Lackawanna Plant, December 10, 1962.*

There has not been any violation of Article II, Sections 1(d) and 3; Article V; Article X; Article XI; Article XIII; Article XIV and Appendix 16, of the Agreement.

Disposition: The grievances are denied.

[LOGO]

BETHLEHEM STEEL

FILE REF. 10/7/76

FROM E. J. Connors

TO H. D. Evenden

SUBJECT Scheduling Procedures & Bidding Practices In The Garage Dept.

In response to your letter of 9/27/76, concerning Grievance No. 74-07197 (R.C. Cordero, 342-386), the following procedures are used in the Garage Dept. We have 5 units.

1—Driving unit

2—Servicemen (tire men & greasers)

3—Body repair

4—Welder

5—Mobile equipment mechanic (repair shop)

R.C. Cordero transferred from the 530 dept. to the garage on 6/9/70 on a requisition dated 5/18/70, copy attached. The requisition clearly states to be used as serviceman.

On 6/17/75, I spoke to Gus Hein in regards to Cordero bidding on driving jobs that were posted for the driving unit. On 6/19/75 I was told that as long as there were men on lay-off in the driving unit Cordero would have to continue as a serviceman until all drivers on lay-off were recalled. Cordero then could be slotted in the driving unit when an opening arose. Note attached copies regarding same.

Bidding procedures—When we have a permanent vacancy in the driving unit it is posted for 30 days. The most senior man that bids the job is then awarded the bid by his plant seniority.

Temporary bids are posted in the driving unit when the driver that holds the job on permanent bid is on regular vacation, EV or S.I.P. This posting is posted for 14 days and the most senior man in the driving unit is awarded the bid by his plant seniority.

We post a 2 week vacation bid for 14 days on a temporary bid and the senior man is awarded this bid the same way.

We do not post a one week vacation bid but we do post it daily on the bid board.

R. C. Cordero was advised that he could not be assigned to the driving unit until all drivers were recalled from lay-off and an opening was available. He still put his bid in for the tab mail driving job.

Appeal form #90 dated 11/21/75 is also in the procedure and appealed directly to Step #3, Grievance #74-22193.

/s/ Earl J. Connors
General Foreman
Plant Services

CC: J.J. McMahon
J.G. Streamer
File

Exhibit 7—Arbitrator's Decision

OFFICE OF THE IMPARTIAL UMPIRE
DECISION NO. 2609

February 24, 1978

In the Matter of the Arbitration between—

BETHLEHEM STEEL CORPORATION

and

UNITED STEELWORKERS OF AMERICA,
LOCAL UNION NO. 2602

Grievances Nos. 74-08206,
74-08213, 74-08512 and
74-10215

Lackawanna Plant

Chronology

	Grievances Nos.			
	74-08206	74-08213	74-08512	74-10215
Submitted in Step No. 1	5/15/75	5/15/75	9/14/75	11/7/75
Appealed to Step No. 2	5/15/75	5/15/75	9/29/75	1/7/76
Discussed in Step No. 2	8/13/75	7/11/75	12/3/75	2/13/76
Appealed to Step No. 3	8/19/75	7/21/75	12/9/75	2/18/76
Discussed in Step No. 3	9/25/76 10/18/76	8/8/75	9/25/76 10/18/76	9/25/76 10/18/76
Appealed to Step No. 4	10/26/76	8/14/75	10/26/76	10/26/76
Discussed in Step No. 4	12/8/76	1/14/76	18/8/76	12/8/76
Appealed to Arbitration	2/18/77	2/26/76	2/18/77	2/18/77
Arbitration Hearing	9/8/77	9/8/77	9/8/77	9/8/77
Transcript Received	11/17/77	11/17/77	11/17/77	11/17/77

Lackawanna Plant
Local Union No. 2602
Grievances Nos. 74-08206, 74-08213, 74-08512 and 74-10215

Decision No. 2609
February 24, 1978

These grievances, in essence, protest the Company's method of assigning the welding work in the 342 Garage Department during a period from approximately November, 1975, to April, 1976, in which the regularly-scheduled craft welder, the grievant, Donald Flowers, an Assistant Grievance Committeeman for the Union, was laid off. The grievances allege violations of Articles II, Sections 1(d) and 3, V, X, XI, XIII, and XIV of the Agreement. The Company, at the Umpire hearing, raised an additional issue under Article XI, Section 2, as to whether the grievant alone would be entitled to a remedy, were the grievance to be sustained, since he was the only individual to have signed the grievance as an "affected" employee under that provision.

The essential facts, except as noted below, are not in dispute, and may be stated as follows. The grievant became a Craft Welder in the 342 Garage Department in 1962. As a Craft Welder, the grievant performed laying out, burning, fitting, brazing, and finish welding with both arc and acetylene welding equipment, on whatever mobile equipment, such as trucks, cars, etc., was brought to the Garage to be repaired or rebuilt. The other employees in the Garage who performed various aspects of the repair or rebuilding of this mobile equipment were either Mobile Equipment Mechanics (MEM) or Body and Fender Men. Although the grievant, as a Craft Welder, was assigned to do most of the welding in the Garage on his turn before he was laid off, the Job Descriptions for the MEM's and the Body and Fender Men set forth that these positions were also to perform welding as part of their other duties. There is no dispute that these individuals performed some welding work even while the

Craft Welder was present. Most of the welding performed by the MEM's and Body and Fender Men was described generally as "tack" welding, i.e., a simple welding procedure, intended only to hold the equipment together until a complete welding job could be performed. The Craft Welder, in addition to his own separate assigned "contracts", would also be assigned to assist the other employees in the Garage on the more complicated welding procedures. Even during the period prior to his layoff, the welding by the Craft Welder was supplemented in the following ways: some of the welding was sent to the Structural Repair Shop, due to a lack of certain welding equipment in the Garage; on occasion, Craft Welders from Structural Repair would be assigned to weld in the Garage; and, certain mobile equipment was sent to outside concerns for repair, usually in circumstances where such mobile equipment had been involved in an accident and the insurance company had requested that the repairs be done by the manufacturer. (The Umpire was advised by the Union that there are additional grievances pending which protest various incidents of such "supplemental" welding.)

The grievant was laid off in November, 1975, during a period in which the Company was experiencing adverse business conditions. Due to the lower volume of production throughout the Plant at the time, the Company was able to take out of service, or "mothball", equipment which required extensive repairs. Consequently, the Company determined that it could maintain operations in the Garage without the services of the Craft Welder; the grievant, as well as some MEM's and Body and Fender Men, therefore, were laid off. A second welder on another turn, a minority employee, was also laid off at this time, so that there were no Craft Welders assigned in the Garage during this period. (The Union advised that there was a complaint pending before the Implementation Committee under the Consent Decree concerning the Company's removal of this Craft Welder).

The Union contended in its pre-hearing brief, and at the Umpire hearing, that the Company had removed the Craft Welders from the Garage as a subterfuge to abolish the Craft Welder position in the Garage. The Umpire finds it unnecessary to determine whether, in fact, the Company ever entertained such a plan, since, in any event, the grievant was subsequently recalled to work as a Craft Welder, making the Union's contention moot. Further, there was no evidence presented to establish that the Company discriminated against the grievant under Article II, Section 1(d) when it laid him off.

The Umpire also finds no violation presented under Article II, Section 3, or the rules relevant to Craft jobs insofar as the Company assigned MEM's in the Garage to perform welding during the period of the grievant's layoff. The Union has not shown an "invasion" of the craft by the work performed by the MEM's, i.e., there is no showing that the MEM's performed "craft welding" which, therefore, was different from the type of welding MEM's had performed when the grievant was present in the Garage. There was no specific evidence to rebut the Company's assertion that equipment requiring extensive "craft welding" was either "mothballed", or repaired by a Craft Welder from Structural Repair, either in that shop or in the Garage. Further, in light of the practice of MEM's doing some welding in the Garage while the Welder was present, and no showing that they did any "craft" type welding during the period of his layoff, there is no violation of any practice under Article II, Section 3, of the Craft Welder in the Garage performing *all* welding. Compare Decision No. 1953, 34 IUD 355, dated December 3, 1971 (Porter/Seward), discussing therein Decision No. 1584, 31 HUD 29, dated October 4, 1968 (Seward). There is also no evidence, in any event, that there was a sufficient amount of welding work performed by MEM's in the Garage to have war-

ranted the recall of the grievant from layoff. Nor was there sufficient welding work to have warranted the Company's retaining the grievant, either in addition to, or instead of one of the MEM's retained, all of whom had greater seniority than the grievant.

Nor has the Union proved that the Company violated Article I, Section 3, by its assignments, during this period, of "craft welding" work to Craft Welders from Structural Repairs, either in that shop or in the Garage. Here there can be no contention of an "invasion" of the Welding Craft, since the employees assigned were Craft Welders. Further, there is no evidence as to the amount of time spent by the Craft Welders from Structural Repair on mobile equipment in the Garage; a Company witness asserted that, because of "mothballing", the total was less than the supplemental welding performed prior to the Craft Welder's layoff. The Umpire concludes that, at most, the Union has shown that there was *some* welding work performed in the Garage, by MEM's or by Structural Repair Welders, which the grievant could have, and, in all likelihood, would have performed had he not been laid off. The Union has not shown that there was a sufficient amount of "craft" welding work to warrant the Company's recalling the grievant from layoff and, perhaps, laying off an MEM in his place.

The Umpire finds no violation of Articles V, X, XI, or XIII have been presented, and these allegations are rejected. As to the allegation that the Company's assignment of welding to the MEM's violated Article XIV, the Union has failed to demonstrate that the MEM's are unqualified to do *any* welding in a safe manner, or that the mobile equipment so repaired would be unsafe to put back in service for that reason.

In light of the above disposition, the Umpire considers it unnecessary to decide the issue concerning "affected employees" under Article XI, Section 2.

DECISION

The grievances are denied.

APPROVED:

/s/ Seymour Strongin
SEYMOUR STRONGIN
Impartial Umpire

/s/ Joseph M. Sharnoff
JOSEPH M. SHARNOFF
Associate Umpire

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. 79-40

DONALD C. FLOWERS
78 Wiesner Road
Lackawanna, NY

—and—

KING E. JONES
96 Alexander Place,

Plaintiffs

v.

LOCAL 2602, UNITED STEELWORKERS OF AMERICA, and UNITED STEELWORKERS OF AMERICA INTERNATIONAL, and BETHELHEM STEEL CORPORATION,

Defendants

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT

SIRS:

PLEASE TAKE NOTICE, that the Bethlehem Steel Corporation, by its attorneys Donald S. Bauman, H. Dawson Penniman and H. Kenneth Schroeder, Jr., Hodgson, Russ, Andrews, Woods & Goodyear, will move this Court at a term thereof to be held at the United States Courthouse in the City of Buffalo, New York, at Part II of said Court, on the 23rd day of April, 1979, at 9:00 o'clock in the forenoon of that date or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 12(b)(6) dismissing the Complaint in this action as to Defendant, Bethlehem Steel Corporation, on the grounds that the complaint fails to state a claim upon which re-

lief can be granted in that the events set forth in the complaint upon which the claims therein are based arose more than ninety (90) days prior to the filing of the complaint and, therefore, such claims are barred by the applicable Statute of Limitations set forth in Section 7511(a) of the New York Civil Practice Law and Rules.

This motion is made upon the attached memorandum and exhibits and the complaint in the case.

DATED: Buffalo, New York,

/s/ Donald S. Bauman
DONALD S. BAUMAN
Bethlehem, PA 18016

/s/ H. Dawson Penniman
H. DAWSON PENNIMAN
Bethlehem, PA 18016

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR

By /s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
Attorneys for Defendant
Bethlehem Steel Corporation

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The Memorandum of Decision of the District Court is printed as Appendix E of the Petition, Pet. App. 12a-15a.

The Judgment of the District Court is printed as Appendix F of the Petition, Pet. App. 16a.

The *Per Curiam* Judgment of the Court of Appeals on the first appeal is printed as Apepndix D of the Petition, Pet. App. 10a-11a.

The Order of the Supreme Court on the first petition is printed as Appendix C of the Petition, Pet. App. 9a.

The Opinion of the Court of Appeals on the Second Appeal is printed as Appendix A of the Petition, Pet. App. 1a-7a.

The Judgment of the Court of Appeals on the Second Appeal is printed as Appendix B of the Petition, Pet. App. 8a.